CF0000062680

(2)

BEFORE THE HON'BLE HIGH COURT OF JUDICATURE AT

JABALPUR

CRIMINAL APPEAL NO. 3082 .....OF 1999

CRIMINAL APPEAL UNDER SECTION 374 (2) OF CODE OF CRIMINAL PROCEDURE 1908

Single Bench (Criminal)

(Arising out of Judgment Dated 07th May 1999 passed in Special Criminal Case No.229/98 parties being M.P.State Through Gol-Bazar police-station Raipur...Prosecution Versus Aran alias Haroni and two others..Accuseds by the Special Judge under the N.D.P.S.Act Raipur)

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15012

ARAN ALIAS HARONI

Aged about 40 years

Son of Shri Murli Korodo (Udaiya)

Resident of: Marloba

Police-Station: Raigarh

District: Gajpati Udisa

Filed on 16/11/99
by Shri V. Pasi Advocate

Rs. A. 21

.... ACCUSED-APPELLANT (IN JAIL)

V E R S U S

State of Madhya Pradesh

Through Gol-Bazar Police-Station

Raipur M.P. ...PROSECUTION

(41)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Before: Hon'ble Shri Justice Dilip Raosaheb Deshmukh

Criminal Appeal No.3082/1999

Aran @ Haroni

Vs.

State of Chhattisgarh

Post for: 29 **-08-2006**

Sd/-
Dilip Raosaheb Deshmukh
Judge

(42)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.3082/1999

Aran @ Haroni

Vs.

State of Chhattisgarh.

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Present:

Smt Kiran Jain, learned counsel with for the appellant.
Shri Ravindra Agrawal, learned Panel Lawyer for the State.

J U D G M E N T

(Delivered on 29th August, 2006)

Appellant Arani @ Haroni has preferred this appeal against the judgment dated 7.5.1999 delivered by Shri Ved Prakash, learned Special Judge, Raipur in Special Case No. 229/1998 whereby the appellant and two other co-accused Johan and Anandi were convicted under Section 20(b)(i) read with Section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'). The appellant was sentenced to undergo rigorous imprisonment for 2 years and a fine of Rs.2,000/- and in default of the same, to undergo R.I. for 2 months.

2. Appellant Arani @ Haroni has undergone the sentence awarded by the learned trial Judge. Co-accused Johan and Anandi did not prefer appeal.

3. Briefly stated the prosecution story is that on 7.10.1998, Asstt. Sub Inspector Shri P.K. Pathak PW-6 of P.S. Gol Bazaar, Raipur received secret information at 8.00 a.m. that the appellant and two co-accused were travelling with ganja from railway station, Raipur in an auto rickshaw towards Meena Lodge, Shastri Bazaar, Raipur. After recording the said information and informing his superiors, Asstt. Sub Inspector Shri P.K. Pathak PW-6 proceeded to the spot and intercepted an auto rickshaw in which the appellant and other two co-accused were seated. After complying with the necessary legal formalities, the bag in possession of the appellant was searched and weighed. It was found to contain 7 kgms of ganja. The attaché in possession of each co-accused also contained 5 kgms of ganja. The seized ganja along with the appellant and two co-accused was produced by Asst. Sub Inspector Shri P.K. Pathak PW-6 before the Officer-in-charge Shri B.S. Rathore PW-7. He sealed the seized article as well as the sample taken therefrom by A.S.I. Shri P.K. Pathak and the same was entrusted to head constable Jeevrakhan Dhruv PW-2 for safe custody in Malkhana.

4. On 9.10.1998, one sealed sample packet pertaining to the appellant was sent for chemical analysis to the FSL along with specimen impression of the seals of A.S.I. Shri P.K. Pathak PW-6 and Officer-in-charge Shri B.S. Rathore, PW-7 Gol Bazaar. Vide report of the F.S.L. Ex. P-38 it was opined that the sample was Ganja. After

completion of investigation, the appellant and the 2 other co-accused were prosecuted.

5. The appellant abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 7 witnesses. Relying upon the evidence led by the prosecution, the learned trial Judge convicted and sentenced the appellant as aforesaid.

6. Learned counsel for the appellant assailed the conviction of the appellant on the ground that Sheikh Ismail, the independent witness of the seizure was not examined by the prosecution. It was also argued that there was non-compliance of Section 55 of the Act due to which conviction of the appellant was liable to be set aside. On the other hand, Shri Ravindra Agrawal, learned Panel Lawyer argued in support of the impugned judgment.

7. Having considered the rival submissions, I have perused the record. The testimony of A.S.I. Shri P.K. Pathak PW-6 relating to seizure of one packet containing 7 kgms of ganja like substance from the appellant is not only unrebutted in cross-examination, but is also corroborated by Ramu Swamy PW-1, Pankaj Akhtar PW-4 and Kanhaiya Sindhi PW-5 who were independent witnesses. It also shows that the secret information received by A.S.I. Shri P.K. Pathak PW-6 was recorded and intimation thereof was also sent to the superior

officers. His testimony also proves that the appellant and the contraband articles seized from the appellant and the sample taken therefrom were produced by A.S.I. Shri P.K. Pathak PW-6 before Shri B.S. Rathore PW-7 who was the Officer-in-charge of the police station, Gol Bazaar, Raipur. The testimony of Shri B.S. Rathore PW-7 also clearly shows that he had affixed his seal on the sample packet before entrusting it in the Malkhana for safe custody. This is also corroborated by the wholly unrebutted testimony of head constable Jeevrakhan Dhruv PW-2. The seizure memo Ex.P-26 bears the impression of seal of City Kotwali, Raipur. The report of the FSL Ex.P-38 also clearly mentions that the sample received for analysis bore the seal of P.S. City Kotwali, Raipur as also the seal of the O.I.C. Shri B.S. Rathore having imprint "BSRMPP". It is, thus clear that the provisions of Section 52 (3) and Section 55 of the Act were also duly complied with. The defence has not been able to show even a remotest possibility of tampering with the samples. Non-examination of Sheikh Ismail by the prosecution also, in no manner, comes to aid of the appellant.

8. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the prosecution has established the guilt of the appellant for the offence under Section 20(b)(i) read with Section 8 of the Act, 1985. The sentence awarded

by the learned trial Judge having already undergone by the appellant, does not call for any interference.

9. In the result, the appeal being devoid of merit is dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya